IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 470 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHODABHAI MELABHAI THAKORE & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NS DESAI for Appellant(s) : 1 - 2.
MS DARSHANA PANDIT, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 07/02/2007

ORAL JUDGMENT

1. Heard ld. Counsel Mr. NS Desai for the appellants-accused and ld.APP Ms. Darshana Pandit for the State.

2. The appellants have preferred the present Criminal Appeal challenging the judgment and order dated 06.06.1996 passed by the ld. Addl. Sessions Judge, Kheda at Nadiad in Special Case No. 70/1995 holding the appellants accused guilty for the offences punishable under section 3(1)(10) of Schedule Castes & Schedule Tribes (Prevention of Atrocities Act) (hereinafter referred to as the Atrocity Act) and sentencing each of the appellants accused to under go R/I for 6 months and to pay a fine of Rs.200/, I/d to undergo S/I for 1 month. The ld. Judge, however, acquitted the appellants accused from the offences punishable under sections 504 & 506(2) of Indian Penal Code.

3. Ld. Counsel Mr. NS Desai for the appellants accused has taken this Court through relevant part of the judgment under challenge as well as through oral as well as documentary evidence led during the course of trial and has assailed the legality and validity of the judgment on various grounds mentioned in the memo of appeal. However, he has concentrated his arguments mainly on two points. The first point canvassed by ld. Counsel Mr. Desai is that the ld. Trial Judge has erred in convicting the accused because the entire incident of alleged incident or ill-treatment has not occurred in a “public view” and in support of his submission, he has placed reliance on number of authorities. For the sake of brevity and convenience, this Court would like to refer to one of the decisions of the Bombay High Court in the case of **V.P.Shetty v/s Sr. Inspector of Police, Colaba and another, 2005**

Cri.LJ 3560. The Bombay High Court, in relevant paras 8 & 9 has observed that there is no prima facie case made out under the Act as no offence was committed in place within the “public view”. The Bombay High Court was dealing with quashing petition under which the petitioner had prayed for termination of proceedings and quashing of the FIR under section 154 of the CrPC.

4. The next submission of ld. Counsel Mr. Desai is that the ld. Trial Judge has committed an error in appreciating the evidence led by the prosecution and the accused ought to have been acquitted saying that it would be risky to rely on the evidence of the complainant and his wife, being interested witnesses and as such there is no independent corroboration. In all cases, corroboration is not required, but according to Mr. Desai, when relations between the parties were strained and when independent evidence was available, even though the same was not led by the prosecution for the reasons best known and, therefore, conviction requires to be quashed and set aside. The trial court ought to have seen the nature of allegations made in the complaint filed before the police. When on one hand the complainant has stated that the offence punishable under section 504 and 506(2) of IPC have been committed, simultaneously he has also stated that the offences punishable under the Atrocity Act have also been committed, then the acquittal for the first two offences i.e. offences punishable under the IPC would go to the root of the conviction recorded by the ld. Trial Judge under the

Atrocity Act.

5. According to Ms. Pandit, the wife of the complainant can corroborate the complainant and it would not be correct to argue that the complaint has no corroboration and when same set of evidence is available, the prosecution may not examine all witnesses. The motive is pleaded and proved by the complainant and when there is no challenge about the presence of the wife of the complainant when incident had occurred, the conviction and sentence should be upheld.

6. I have considered the submissions made in light of the oral as well as documentary evidence read over to the Court. It has come on record that the accused persons were cultivating a parcel of land owned by one Gordhanbhai. This very parcel of land was being cultivated by the complainant before two years. Of course, the complainant has denied that Gordhanbhai took back the possession of the agricultural land and it was given to one bricks-maker and thereafter decided to give entire parcel of land to the accused. When the land was with the bricks-maker, the complainant had kept one portion of the said land for growing cornflake (popularly known as “Makai”). So, the terms between the complainant and the accused were undisputedly strained. In such a situation, the prosecution ought to have led some independent evidence as to the occurrence of the incident and especially the insult allegedly made by the accused at a given place and time. It is the case of the

prosecution that after the incident, the complainant had been to his office and also to his father. So, when he reached to his office, father of the complainant was in his company. So, there was no reason for him to state anything which can be said to be haphazard theory. He has stated on oath that he had narrated the entire incident to one Ramanbhai Vaghjibhai Makwana serving in his office and this Ramanbhai Makwana was informed about this incident in writing. The prosecution has suppressed this writing nor has examined said Ramanbhai Makwana. So, the prosecution has not acted fairly by dropping said Ramanbhai Makwana and by not producing the written complaint given by the complainant in his office. The time taken, therefore, by the complainant in giving FIR to the police, can be said to be unreasonably long. It was not safe to use such a delayed complaint as corroborative piece of evidence. The wife of complainant was a person interested in the result of the case. So, her status was of a partisan witness. In such a situation, the accused at least was required to be given benefit of doubt. Hence, the Court is of the view that the impugned judgment and order of conviction and sentence is erroneous and bad-in-law and requires to be quashed and set aside as the same is based on erroneous appreciation of evidence ignoring the accepted and well-established principles of law on the point. Panchanama would not carry the case of the prosecution any further in such a case. It is not the say of the panch, in the examination-in-chief that when this incident had occurred, nobody else who can be said to be a third party was present.

It appears that the accused was tempted to rope the father and son both in a prosecution which appears to be a created prosecution. The ld. Trial Judge, in such a situation, ought to have given benefit of doubt to the accused and ought to have acquitted the appellants accused.

7. In the result, appeal succeeds and is hereby allowed. The impugned judgment and order dated 06.06.1996 passed by the ld. Addl. Sessions Judge, Kheda at Nadiad in Special Case No. 70/1995 holding the appellants accused guilty for the offences punishable under section 3(1)(10) of Schedule Castes & Schedule Tribes (Prevention of Atrocities Act) (hereinafter referred to as the Atrocity Act) and sentencing each of the appellants accused to under go R/I for 6 months and to pay a fine of Rs.200/, I/d to undergo S/I for 1 month, is hereby quashed and set aside. The appellants accused are acquitted of the aforesaid offences and are ordered to be set at liberty forthwith if not required to be detained in any other case. Accused are on bail, their bail bonds stand discharged. Fine, if paid, be refunded to the appellants accused.

[C.K. BUCH, J]

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